



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

(petitioner)

DECISION

MRA-40/55882

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 10, 2002, under Wis. Stat. § 49.455(8)(c) (1999-00) and Wis. Admin. Code § HFS 103.075(8)(c) (February 2002), to establish that petitioner's wife needs income above the level provided by the Medical Assistance (MA) program spousal impoverishment rules' Minimum Monthly Maintenance Needs Allowance (MMMNA), a fair hearing was held on February 5, 2003 at the Courthouse Annex on North 10<sup>th</sup> Street in Milwaukee, Wisconsin.

The issue for determination is whether it has been established that petitioner's wife needs income above the level provided by the MMMNA.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner) (not present at February 5, 2003  
hearing)

Represented by:

Patricia J. Nelson  
Nelson, Irvings & Waeffler, S.C.  
Suite 210  
2401 North Mayfair Road  
Wauwatosa, Wisconsin 53226

Division of Health Care Financing (DHCF)  
Department of Health & Family Services (DHFS)  
State of Wisconsin  
1 West Wilson Street  
Room 250  
P.O. Box 309  
Madison, Wisconsin 53701-0309

BY: No appearance  
Milwaukee County Department of Human Services  
Courthouse Annex  
907 North 10<sup>th</sup> Street  
Milwaukee, Wisconsin 53233

**OTHER PERSONS PRESENT:**

Heidi Weizenicker, Secretary to Ms. Nelson

HEARING OFFICER:

Sean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (SSN xxx-xx-xxxx; CARES #xxxxxxxxxx) is a resident of Milwaukee County.
2. Petitioner's wife's MMMNA, without a fair hearing, is \$2,266.50.
3. Petitioner claims monthly expenses for his wife of in excess of the MMMNA of \$2,266.50 and is requesting that her monthly maintenance needs allowance be increased.
4. The following monthly expenses are those claimed by petitioner for his wife:
  - (i) rent/assisted living -- \$975.00;
  - (ii) one meal per day at assisted living dining room (required) -- \$195.00;
  - (iii) assisted living service package (oral cares, bathing, etc.) -- \$650.00;
  - (iv) supplemental health insurance -- \$353.37;
  - (v) prescription drugs (50% share) -- \$220.43;
  - (vi) bell alert (lifeline) -- \$24.95;
  - (vii) telephone -- \$17.95;
  - (viii) electric utility -- \$51.92;
  - (ix) groceries, paper products, cleaning products, over the counter medications -- \$200.00;
  - (x) incontinence products -- \$75.00;
  - (xi) clothing -- \$75.00;
  - (xii) dental and eye care expenses -- \$50.00; and,
  - (xiii) entertainment, dining out, reading materials, transportation, hair care -- \$100.00.

The above is a total of \$2,988.62 per month.

Exhibits #2, #3, #3A, #4 & #7.

5. Petitioner's wife currently needs a monthly income of \$2,888.37 in order to avoid a situation that would result in her not being able to provide for her own necessary and basic maintenance needs. Exhibits #2, #3, #3A, #4 & #7.

**DISCUSSION**

Petitioner is a nursing home resident and is receiving MA. Petitioner's wife lives in the community in an assisted living facility.

When an MA recipient is in a nursing home all of that recipient's income, with certain limited exceptions, must be used to pay nursing home costs. MA pays any nursing home costs which exceed the recipient's income.

Many MA recipients who are nursing home residents are, like petitioner, married and have spouses who live in the community. In these cases, the law recognizes that requiring all of the recipient's income to be used to pay nursing home costs may leave the community spouse in poverty. In order to prevent the impoverishment of the community spouse, the law allows the community spouse to receive the lesser of the following as monthly income: \$2,266.50; or, \$1,990.00 plus excess shelter allowance. This is known as the "Minimum Monthly Maintenance Needs Allowance" (MMMNA). Wis. Stat. §§ 49.455(4)(a)2. & (c) (1999-00); Wis. Admin. Code § HFS 103.075(6)(b)1. & (c)2. (February 2002); MA Handbook, Appendix 23.6.0.Section A. In this case, petitioner's wife's MMMNA, without a fair hearing, is \$2,266.50.

The MMMNA can be increased if either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the MMMNA. Wis. Stat. § 49.455(8)(c) (1999-00); Wis. Admin. Code § HFS 103.075(8)(c) (February 2002); MA Handbook, Appendix 23.6.0.Section A.1. The phrase "exceptional circumstances resulting in financial duress" means situations that result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs. Wis. Admin. Code § HFS 103.075(8)(c) (February 2002); MA Handbook, Appendix 23.6.0.Section A.1. Thus, the burden is on the person seeking an increase in the MMMNA. It must be established that the community spouse needs income above the level provided by the MMMNA in order to avoid a situation that would result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs.

The following monthly expense claimed by petitioner for his wife cannot be allowed as necessary and basic maintenance needs for the reason indicated: \$100.00 for entertainment, dining out, reading materials, transportation, hair care. There has not been any showing that these expenses are necessary, basic, and a maintenance need. Additionally, there has not been any documentation submitted to support any of these expenses.

The following monthly expenses claimed by petitioner for his wife can be allowed, in the amounts indicated, as necessary and basic maintenance needs:

- (A) rent/assisted living -- \$975.00;
- (B) one meal per day at assisted living dining room (required) -- \$195.00;
- (C) assisted living service package (oral cares, bathing, etc.) -- \$650.00;
- (D) supplemental health insurance -- \$353.37;
- (E) prescription drugs (50% share) -- \$220.43;
- (F) bell alert (lifeline) -- \$24.95;
- (G) telephone -- \$17.70 [petitioner claimed \$17.95, but only \$17.70 is supported by the documentation submitted (\$17.70 is the average of the 2 telephone bills submitted)];
- (H) electric utility -- \$51.92;

- (I) groceries, paper products, cleaning products, over the counter medications -- \$200.00;
- (J) incontinence products -- \$75.00;
- (K) clothing -- \$75.00; and,
- (L) dental and eye care expenses -- \$50.00.

The above is a total of \$2,888.37 per month.

Finally, petitioner argues that his wife's claimed expenses, for things other than her shelter and her assisted living service package, are less than the amount assumed by law. Petitioner cites the fact that "\$1,990.00 plus excess shelter allowance" is allowed (as long as this amount is less than \$2,266.50) and that the "excess shelter allowance" is shelter expenses in excess of \$597.00 per month. Exhibit #6; MA Handbook, Appendix 23.6.0.Section A.1. However, this is not the standard to determine whether an expense is allowable or not. The standard is whether the expense is a necessary and basic maintenance need. Wis. Admin. Code § HFS 103.075(8)(c) (February 2002); MA Handbook, Appendix 23.6.0.Section A.1. As pointed out above, not all of the expenses claimed for petitioner's wife have been shown to meet this standard.

### **CONCLUSIONS OF LAW**

Petitioner has established that his wife needs \$621.87 (\$2,888.37 minus the current MMMNA of \$2,266.50) above the level provided by the MMMNA in order to avoid a situation that would result in her not being able to provide for her own necessary and basic maintenance needs.

**NOW, THEREFORE, it is**

### **ORDERED**

That this matter be REMANDED to the Milwaukee County Department of Human Services (County) and that the County use \$2,888.37 (instead of \$2,666.50) as the MMMNA for petitioner's wife in determining the monthly income allocation to be made from petitioner to his wife. This shall be done within ten days of the date of this Decision.

### **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of  
Madison, Wisconsin, this \_\_\_\_\_ day  
of \_\_\_\_\_, 2003.

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Sean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals  
41/SPM